



FH
[REDACTED]

STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of

[REDACTED]
[REDACTED]
[REDACTED]

DECISION

FOO/172316

PRELIMINARY RECITALS

Pursuant to a petition filed February 26, 2016, under Wis. Admin. Code § HA 3.03(1), to review a decision by the Eau Claire County Department of Human Services in regard to FoodShare benefits (FS), a hearing was held on April 19, 2016, at Eau Claire, Wisconsin.

The issue for determination is whether the department correctly reduced the petitioner's current FoodShare allotment to recover a past overpayment.

There appeared at that time and place the following persons:

PARTIES IN INTEREST:

Petitioner:

[REDACTED]
[REDACTED]
[REDACTED]

Respondent:

Department of Health Services
1 West Wilson Street, Room 651
Madison, Wisconsin 53703

By: [REDACTED]

Eau Claire County Department of Human Services
721 Oxford Avenue
PO Box 840
Eau Claire, WI 54702-0840

ADMINISTRATIVE LAW JUDGE:

Michael D. O'Brien
Division of Hearings and Appeals

FINDINGS OF FACT

1. The petitioner (CARES # [REDACTED]) is a resident of Eau Claire County.
2. On October 23, 2014, the petitioner agreed in writing to waive a disqualification hearing after the county agency alleged that he intentionally violated the FoodShare program's rules.

3. On December 14, 2014, the county agency notified the petitioner that he was overpaid \$4,316 in FoodShare and that this overpayment occurred because he intentionally violated the program's rules. He did not appeal this allegation until July 15, 2015. On August 27, 2015, the Division of Hearings and Appeals dismissed his appeal because it was filed late. He asked that the division reconsider its decision, but that request was denied on September 21, 2015. *DHA Decision No. FOP 167291*.
4. On September 28, 2015, the petitioner appealed the department's decision to intercept any income tax refund he might receive to recover his FoodShare overpayment. His appeal challenged the underlying overpayment. The Division of Hearings and Appeals dismissed his appeal on February 5, 2016, finding that it was too late to consider the overpayment. *DHA Decision No. FTI/169021*.
5. The petitioner reapplied for FoodShare on January 12, 2016, after his intentional program violation sanction ended and was awarded \$16 in FoodShare each month. All of this money is being taken to recover the past overpayment.
6. The petitioner lives with his son. They each receive \$816.78 per month in SSI. Their total rent is \$428 per month. After the standard and shelter deductions are taken from their gross income, their total net income is \$1,331.84 per month.

DISCUSSION

This is the latest in a series of challenges by the petitioner to a finding in 2014 that he was overpaid \$4,316 in FoodShare because he did not report that his son was part of his household. He admitted that he intentionally violated the program's rules by signing a waiver of his right to a hearing on October 23, 2014. The agency then brought an overpayment action against him in December 2014. He did not appeal this until July 15, 2015. Because those challenging FoodShare overpayments must do so within 90 days, his appeal was dismissed and the overpayment was determined to be valid. He asked for a rehearing, but this was denied because the Division of Hearings and Appeals lost its authority to consider his case when he did not appeal it on time. He renewed his challenge of the underlying overpayment on September 28, 2015, when he appealed the department's decision to intercept any income tax refund he might receive to recover his FoodShare overpayment. The Division of Hearings and Appeals dismissed the appeal, again pointing out that it could no longer rule on the underlying appeal. Now his disqualification period for the intentional program violation has expired, and he was found eligible for \$16 in FoodShare each month. The department is taking this entire amount to recover the overpayment. He again contends that the underlying overpayment is incorrect.

As was pointed out to him in three prior decisions, whether that overpayment should have been found in the first place is something the Division of Hearings and Appeals no longer has authority to consider because he admitted in writing that he violated the program's rules and he did not challenge the overpayment finding on time. The Division of Hearings and Appeals simply has no authority to reverse this finding at this late date.

The petitioner indicates that he would like more than \$16 in FoodShare each month. FoodShare benefits are based upon household size and net income. The petitioner and his son have a total of \$1,633.56 in gross income. After allowable deductions are subtracted, that amount is reduced to net income of \$1,331.84. Any two-person household with \$1,136 or more in net income receives \$16 in FoodShare, the amount the agency allowed the petitioner's household.

The only question is whether the county agency has correctly taken this entire \$16 allotment to recover the past overpayment that I have no authority to overturn. Federal law requires the department to recover all overpayments of FoodShare, regardless of who is at fault. 7 CFR § 273.18(a). When an overpayment occurs because of an intentional program violation, the department recovers the greater of \$20 or 20% of

the total allotment each month. 7 CFR § 273.18(g)(1)(ii); *FoodShare Wisconsin Handbook*, § 7.3.2.6. Nothing in these rules reduces this amount if the recovery results in the recipient not receiving any FoodShare. Based upon this, I find that the county agency correctly seeks to recover the petitioner's entire \$16 FoodShare allotment each month.

CONCLUSIONS OF LAW

1. The petitioner cannot challenge the underlying FoodShare overpayment because that matter has already been determined and his time for appealing it is over.
2. The county agency has correctly taken the petitioner's entire \$16 monthly FoodShare allotment to recover a past overpayment.

THEREFORE, it is

ORDERED

The petitioner's appeal is dismissed.

REQUEST FOR A REHEARING

You may request a rehearing if you think this decision is based on a serious mistake in the facts or the law or if you have found new evidence that would change the decision. Your request must be **received within 20 days after the date of this decision**. Late requests cannot be granted.

Send your request for rehearing in writing to the Division of Hearings and Appeals, 5005 University Avenue, Suite 201, Madison, WI 53705-5400 **and** to those identified in this decision as "PARTIES IN INTEREST." Your rehearing request must explain what mistake the Administrative Law Judge made and why it is important or you must describe your new evidence and explain why you did not have it at your first hearing. If your request does not explain these things, it will be denied.

The process for requesting a rehearing may be found at Wis. Stat. § 227.49. A copy of the statutes may be found online or at your local library or courthouse.

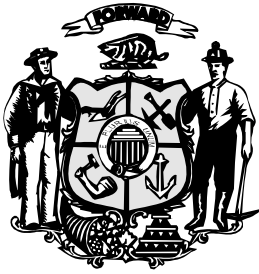
APPEAL TO COURT

You may also appeal this decision to Circuit Court in the county where you live. Appeals must be filed with the Court **and** served either personally or by certified mail on the Secretary of the Department of Health Services, 1 West Wilson Street, Room 651, Madison, Wisconsin 53703, **and** on those identified in this decision as "PARTIES IN INTEREST" **no more than 30 days after the date of this decision** or 30 days after a denial of a timely rehearing (if you request one).

The process for Circuit Court Appeals may be found at Wis. Stat. §§ 227.52 and 227.53. A copy of the statutes may be found online or at your local library or courthouse.

Given under my hand at the City of Madison,
Wisconsin, this 26th day of April, 2016

\sMichael D. O'Brien
Administrative Law Judge
Division of Hearings and Appeals



State of Wisconsin\DIVISION OF HEARINGS AND APPEALS

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The preceding decision was sent to the following parties on April 26, 2016.

Eau Claire County Department of Human Services
Division of Health Care Access and Accountability